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From:

Sent: Tuesday, August 06, 2013 4:22:09 PM

To:

Cc:

Subject: Question about Head of Household filing status --

You asked us whether a married taxpayer can file a tax return as a head of a household for years during which the taxpayer's spouse was living apart from the taxpayer due to the spouse's employment situation. The taxpayer and the taxpayer's spouse were never legally separated and did not intend to live apart permanently.

For purposes of Subtitle A of the Internal Revenue Code, an individual shall be considered a head of a household only if such individual is unmarried at the close of taxable year, is not a surviving spouse, and satisfies requirements under § 2(b). In determining whether a person is unmarried, § 7703(b) provides that individuals who are married will be considered unmarried if all of the following conditions are met:

- (1) An individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e));
- (2) Such individual furnishes over one-half of the cost of maintaining such household during the taxable year; and
- (3) During the last 6 months of the taxable year, such individual's spouse is not a member of such household.

As to condition (3), Treas. Reg. § 1.7703-1(b)(5) provides, in part:

An individual's spouse will be considered to be a member of the household during temporary absences from the household due to special circumstances. A nonpermanent failure to occupy such household as his abode by reason of illness, education, business, vacation, or military service shall be considered a mere temporary absence due to special circumstances.

Accordingly, even if the taxpayer is not a surviving spouse, meets the requirements under § 2(b) and §§ 7703(b)(1) and (2), if the taxpayer's spouse was away by reason of business and planned to share a common household with the taxpayer in the future, the taxpayer cannot be considered a head of a household. In such cases, the spouse's absence from the household is considered a mere temporary absence due to special circumstances, and the taxpayer is not eligible to file as head of household.

If you have any more questions, please let me know.

Regards,